* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Delivered on February 19, 2007

\+ CRL.REV.P. 98/2007

VIJAY KUMAR .....Petitioner
Through Mr. Rajinder Pal Singh with Mr. Sanjay Shah, Advocates

VERSUS

THE STATE OF NCT OF DELHI ...Respondent
Through Mr. O.P. Saxena, APP for State

**CORAM:**
**Mr. Justice S. Ravindra Bhat**

1. Whether reporters of local papers may be allowed to see the judgment.? yes
2. To be referred to the Reporter or not? yes
3. Whether the judgment should be reported in the Digest? yes

**Mr. Justice S. Ravindra Bhat:(Open Court)**

1. This petition was originally filed as an application for leave to appeal. At the request of the petitioner it was converted into a revision proceeding under Section 397 Criminal Procedure Code by order dated 14.2.2007. It impugns the judgment and order of acquittal by the Additional Chief Metropolitan Magistrate dated 28.11.2006. The petitioner was complainant-informant and had alleged that the Respondents 2 & 3 were

guilty of having committed offences under Sections 420/468/471/34 IPC.

2. According to the petitioner the second respondent (Trilok Kumar referred to as "A-1") was his tenant. It was alleged that with the help of the third respondent (R.K. Ghai referred to as "A-2") he forged a General Power of Attorney in respect of house property, filed it with the MCD and sought to obtain water connection. It was alleged that the forged documents were typed by one Inder Kumar at Seelampur Court and registered with the dishonest intention of grabbing the property.

3. In support of the complaint the petitioner examined himself as PW-1. According to his testimony an agreement to sell was executed between him and A-1 in which the consideration agreed was Rs.3,57,000/- and he received Rs.2,50,000/-. At the request of A-1 the date for paying the balance was extended. He claimed that on 27.6.1997 he became aware that Delhi Jal Board officials had visited the residence to install a water meter even though he had not applied for it. Upon further enquiry he learnt that A-1 applied for water connection on the basis of a General Power of Attorney which did not bear his signatures or thumb impression but was a forged and fabricated document. He deposed about having applied for a certified copy. In the cross-examination the petitioner admitted that according to the Agreement to Sell, possession of the property was handed over to A-1. The version of A-1 and A-2 were that the former was a tenant and had paid substantial amounts to purchase the property but despite further requests the petitioner did not execute the sale deed. He filed a civil suit for execution of the sale deed or in the alternative for return of the amounts paid by him. According to A-1, in retaliation, the petitioner implicated him falsely in a criminal case.

4. After considering the materials the trial Court, felt that no case was made out and proceeded to acquit both the accused of the offences. Its reasoning was that the complainant - petitioner admitted his photograph on the alleged document namely General Power of Attorney. The trial Court felt that there was no explanation as to how such photograph existed on the Power of Attorney. The Court also was of the opinion that the onus of proving the case was upon the prosecution/complainant which had not sent the documents for expert examination.

5. It was contended on behalf of the petitioner that the trial Court fell into grave error in proceeding hastily to acquit the accused. Admittedly, the accused A-1 had not paid the balance amount and was out to grab the property. The version of the complainant that the document in question was never executed by him, had not been shaken in the examination. It was contended that even if there was some lacunae that ought not to have resulted in automatic acquittal. Counsel contended that the copy of the General Power of Attorney which was pasted in the records of the Sub-Registrar and which were forged by A-1 and A-2 were seized during the investigation. It was the duty of the prosecution to produce that evidence. It did not, however, do so.

6. Counsel contended that the accused no where stated or even mentioned in the statements under Sections 313 that they were furnished with the General Power of Attorney document in question to act on behalf of the petitioner.

7. I have considered the submissions of the parties as well as the depositions of PW-1 and the statements of A-1 and A-2 under Section 313.

8. The trial Court noted that the specimen signatures of PW-1 were obtained, for

comparison with the disputed signatures on the document in question. The petitioner in his deposition clearly stated that the copy of General Power of Attorney which had been collected by him from the Registrar's office was not handed over to the police but was filed in the civil suit. He furnished a photocopy of the document to the police. The petitioner also admitted to receiving Rs.2.50 lakhs and further that the Agreement to Sell betweens the parties evidenced handing over the possession of the premises.

9. In addition to the depositions of PW-2 and also the statements of the accused, the record shows that on not less than six occasions the Court adjourned the matter for the presence of the witnesses who were to, but could not produce the documents. Finally on 12.4.2005 the Court declined to grant further opportunity in that regard and proceeded later with the merits.

10. As the discussion would reveal the entirely of the allegations hinge on the genuineness of the alleged General Power of attorney. The petitioner could not produce the original. No effort was made also to obtain his specimen signatures and send it for comparison with signatures on the disputed document. The further evidence suggests that the parties were in litigation before the civil Court and that the petitioner had received Rs.2.50 lakhs.

11. The revisional jurisdiction of the High Court under Section 397, where appeals against acquittal have not been provided for, is confined to the overall ambit of such jurisdiction. The Court intervenes but rarely in exceptional circumstances where the conduct of the proceedings or the judgment or order of the Court below discloses manifest failure of justice or palpable illegality in its approach. The Court cannot

substitute the view reasonably taken by a trial Court on a re-appreciation of the evidence, as it were merely because another view is possible.

12. On an overall conspectus of the facts and the attendant circumstances, no glaring infirmity in the trial Court's approach has been made out; I am also satisfied that the impugned judgment has not resulted in manifest failure of justice. Consequently, the revision has to fail. It is, therefore, dismissed.

**February 19, 2007.** **(S. RAVINDRA BHAT)**
**mlb** **JUDGE**